

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

**I. CLAIM STATUS AND AMENDMENTS**

Claims 11-23 were pending in this application when last examined and stand rejected.

Claim 11 is amended to reflect that both the first and second layers are liquid impermeable as supported by the disclosure, for instance, at page 6, lines 1-7.

Claims 11-23 are also amended in a non-narrowing manner to better conform to U.S. claim form. Such revisions are non-substantive and not intended to narrow the scope of protection. Such revisions include: replacing the "characterized by" language with "wherein"; revising the beginning of the claims to recite "A" or "The" and revising the claim language throughout to provide proper antecedent basis throughout the claims. Also, claims 11, 17, 18, 19 and 20 have been amended to use the appropriate symbols (i.e.,  $m_1$ ,  $m_2$ ,  $m_c$ ,  $t \cdot m_c$ , 0.1 mm, etc.) to be consistent with the disclosure, for example, at page 3, line 25 to page 4, line 5.

Claim 11 is also amended in a non-narrowing manner to remove and/or clarify the "adapted for use of a user" language and to better delineate the various claim elements. Support can be found, for example, at page 3, line 25 to page 4, line 5.

No new matter has been added by the above claim amendments.

Claims 1-23 remain pending after entry of this amendment.

Applicants note that the above claim amendments are intended to address matters of form only as they are not intended to affect the scope of the claims. Accordingly, if the next Office Action on the merits includes a new rejection of one or more claims, the Action must be non-final.

Applicants are submitting the present Amendment without prejudice to the subsequent prosecution of claims to some or all of the subject matter which might be disclaimed by virtue of this response (although none is believed to be), and explicitly reserve the right to pursue some or all of such subject matter, in Divisional or Continuation Applications.

Applicants thank the Examiner for the careful examination of this case and respectfully request reexamination and reconsideration of the case, as amended. Below Applicants address the rejections in the Office Action and explain why the rejections are not applicable to the pending claims as amended.

## II. CLAIM OBJECTION

Claim 11 was objected for the language "absorbent article is adapted for use of a user" for the reasons on page 2 of the Office Action.

The present amendment overcomes this objection by amending claim 11 to remove the "adapted for use of a user" language and to clarify how the claimed breathable backsheet is used by a user. Thus, the objection should be withdrawn.

### III. INDEFINITENESS REJECTION

Claim 19 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the recitation of a minimum distance of "0,1 mm" for the reasons on page 2 of the Office Action.

This rejection is respectfully traversed as claim 19 has been amended to change "0,1 mm" to "0.1 mm" to use more conventional language as supported by the original claims and disclosure, and the embodiments as depicted in Figures 3 and 4. The claim is thus clear, definite and has full antecedent basis.

This rejection is believed to be overcome, and withdrawal thereof is respectfully requested.

### IV. ANTICIPATION REJECTION

Claims 11-23 were rejected under 35 U.S.C. § 102(b) as anticipated by LINMAN (U.S. 4,681,793) for the reasons on page 3 of the Office Action.

This rejection is respectfully traversed.

The Office has construed the two layers 20 and 25 of the back sheet disclosed in LINMAN as meeting the features and capable of performing the function of the instantly claimed breathable backsheet. Applicants respectfully disagree with this position.

In LINMAN, the outermost layer 20 is liquid permeable (see claim 1), whereas the first innermost layer is substantially liquid impermeable, and may be vapour pervious. However, in the most preferred embodiment, the inner layer is vapour impervious (see col. 6, lines 26-31). This contrasts the breathable backsheet of amended claim 11.

Amended claim 11 defines that the first layer allows a first amount of vapour mass flow  $m_1$  and the second layer allows a second amount of vapour mass flow  $m_2$ , wherein  $m_2$  is less or equal to  $m_1$ . This implies that the vapour mass flow in the two sheets are of such a character that vapour is collected in the region between the two layers, which vapour may subsequently condense in the region between the layers.

A prerequisite for this operation is that both layers are liquid impermeable, otherwise in the event the inner layer is liquid permeable the region between the two layers would be filled with liquid, and alternatively in the event the outer layer is liquid permeable, condensed liquid would leak to the user.

Moreover, note that claim 11 (i.e., the sole independent claim) has been amended to reflect that both the "first and second layers are liquid impermeable". Support can be found at page 6, lines 1-7 of the disclosure.

It is well established that to anticipate a claim, a cited prior art reference must disclose or suggest each and every element of the claimed invention. See, M.P.E.P., Eighth Ed., Rev. 6 (September 2007) at § 2131.

Since the outer layer is water permeable in LINMAN, the reference cannot fulfill the feature and function in amended claim 11 as being liquid impermeable. Furthermore, the objective of the claimed breathable backsheet in preventing condensed liquid to discharge to the user cannot be achieved by a product as defined in LINMAN. Thus, it is clear that LINMAN fails disclose or suggest each and every element of claim 11. For this reason, LINMAN cannot anticipate the breathable backsheet of claim 11.

It must further be observed that since the outer sheet is water permeable, the mass transport of vapour is very high through the outer layer, hence  $m_2$  is substantially larger than  $m_1$  in LINMAN. This also contrasts the claimed breathable backsheet, wherein  $m_2$  is less than or equal to than  $m_1$  as required in claim 11. For this additional reason, it is clear that LINMAN fails disclose or suggest each and every element of claim 11 and LINMAN cannot anticipate the claimed breathable backsheet.

Since document LINMAN has as a fundamental feature in the claim that the outer layer is water permeable, a person skilled in the art would not depart from this teaching to arrive at the breathable backsheet of amended claim 11, wherein both the first and second layers are water impermeable. Hence, the claim 11 is also not obvious from the teaching of LINMAN.

In view of the above, claim 11 is believed to be novel and patentable over LINMAN.

Claims 12-23 depend, either directly or indirectly, on claim 11. Thus, the dependent claims are also novel and patentable over LINMAN for the same reasons given their dependency on claim 11.

Therefore, the above 102(b) rejection over LINMAN is untenable and should be withdrawn.

#### V. CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/Jay F. Williams/

Jay F. Williams, Reg. No. 48,036  
209 Madison Street, Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

JFW